APPENDIX A

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AREA RATE PROCEEDING; ET AL., DOCKET NO. AR61-2, ET AL.; AMERADA PETROLEUM CORPORTION, DOCKET NO. C160-688; UNION TEXAS PETROLEUM — DIVISION OF ALLIED CHEMICAL CORPORATION, DOCKET NO. C161-1411; THE BRITISH-AMERICAN OIL PRODUCING COMPANY, DOCKET NO. G-18963; FOREST OIL CORPORATION, DOCKET NO. C161-248; GENERAL AMERICAN OIL COMPANY OF TEXAS, DOCKET NO. C161-182; HASSIE HUNT TRUST, DOCKET NO. G-18897; C. H. LYONS, SR., DOCKET NO. C160-329; OCEAN DRILLING & EXPLORATION CO., DOCKET NO. C160-743; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. G-16946; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. G-19223; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. C161-355; PERRY R. BASS (FORMERLY RICHARDSON & BASS), DOCKET NO. C161-714; REUBEN W. MAYRONNE, JR., D/B/A RIVERSIDE OIL COMPANY, DOCKET NO. G-20182; J. C. TRAHAN DRILLING CONTRACTORS (FORMERLY SHALLOW OIL COMPANY, INC.), DOCKET NO. C160-698; SOUTHWEST GAS PRODUCING COMPANY, INC., DOCKET NO. G-20046; TRICE PRODUCTION COMPANY, DOCKET NO. C160-17; TEXACO INC. (FORMERLY THE TXL OIL CORPORATION), DOCKET NO. C161-969; UNION OIL COMPANY OF CALIFORNIA, DOCKET NO. C161-331; UNION PRODUCING COMPANY, DOCKET NO. C161-1111; U.S. OIL OF LOUISIANA, INC., DOCKET NO. C161-144; ATLANTIC REFINING COMPANY, DOCKET NO. C161-450; PAN AMERICAN PETROLEUM CORPORA-

TION, DOCKET NO. C161-808; HARVEY PELTIER, DOCKET NO. C160-505; SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-18461

Order Denying Motion To Impose Price Conditions In Temporary Certificates
(Issued February 5, 1963)

(29 FPC 223)

On December 12, 1962, Public Service Electric and Gas Company, Long Island Lighting Company and United Gas Company (Movants) filed a motion to impose price conditions in temporary certificates heretofore issued to the independent producers in the above listed dockets.[1] Responses to the motion were filed by Transcontinental Gas Pipe Line Corporation (Transco) and 15 independent producers.

The producers listed above have each been granted temporary authority to make sales to Transco. In each instance the authority was granted without condition as to refund to a price below that at which the sales would be initiated.

(29 FPC 224)

The initial price would, however, continue to be collected until a prospective price could be determined after hearing upon the applications. The contracts were entered into during the years

---

[1] The matters listed above which were previously consolidated with the Area Rate Proceeding, Docket No. AR61-2 were severed therefrom by order of the Commission issued December 31, 1962; in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.* The above-listed producers were consolidated with that case by that order. The motion herein was directed to the individual dockets, however, and will be treated accordingly, except *Union Texas Petroleum,* Docket No. C161-1411, which was dismissed and cancelled by Order issued September 14, 1962, and *Amerada Petroleum Corporation,* Docket No. C160-688, which is the subject of a settlement agreement and was severed from the proceedings in Docket No. G-13221, et al, by Order issued February 1, 1963, p. 204, *supra.*

1958 through 1960; the temporary authorizations were issued from 1958 through January 12, 1961.

Sales of gas were commenced by each of the producers pursuant to the temporary authority. Movants have requested the Commission to either (1) terminate the existing temporary authorizations and concurrently issue temporary authorizations containing conditions which would make the sales subject to refund at a lower price, or (2) in the alternative, to amend the existing temporary certificates by imposing price conditions in order to provide for appropriate refund from the date of the Commission's order. Movants indicate in addition that "where appropriate, the Commission should provide an opportunity for the applicants to reject the conditioned proffered certificate."

Essentially the motion constitutes an application for rehearing of the Commission's Letter Orders issuing temporary authorization to the above-listed producers. Section 19(a) of the Natural Gas Act provides that an application for rehearing must be submitted within 30 days following the issuance of an order. The motion herein was not submitted within the statutory 30-day period following the issuance of the temporary authorization. There is no question that such temporary authorizations constitute appealable orders and, therefore, rehearing should be sought within 30 days. However, we recognize that the letter orders issuing the authorizations were unreported, although copies thereof were available to the public. We shall not, therefore, dismiss the motion as being untimely. However, for the reasons hereinafter set forth, we must deny the motion to terminate the existing temporary authorizations.

Section 7(c) of the Natural Gas Act empowers the Commission to issue temporary certificates when emergency situations exist. We have promulgated regulations recognizing certain situations which constitute emergency situations as to independent producers. See Regulations under the Natural Gas Act, Section

157.28.[2] Each of the above-listed producers requested the issuance of temporary authorization to sell gas and set forth an emergency situation which, under our regulations, permitted the issuance of such authority. Temporary certificates were therefore issued. Movants would now have us withdraw the existing authority and proffer to each producer a new temporary certificate conditioned to meet the requested requirements, giving each producer the opportunity to reject such temporary authority. Movants ignore the fact that the producers and pipe line here involved have already acted upon the temporary authority as issued and have undoubtedly expended considerable funds in justifiable reliance thereon and, in the case of the pipe line, Transco, has become dependent upon this source of supply, in part, to meet its market requirements. To now offer the producers an opportunity to reject a substituted temporary certificate, conditioned to provide for refunds down to the price to be fixed after the Section 7 hearing we have ordered, would clearly be contrary to the public interest. It would jeopardize the pipeline's existing gas supply from these sources, and place them in a position where, even if they could replace the gas with other supply, their investment in facilities here would be lost and new expenditures required without concomitant benefit to the public. It would also leave the producers, all of whom received temporary authorizations only upon a showing of emergency conditions, with no assurance that they could secure new outlets for their gas.

(29 FPC 225)

Petitioner's proposal in other words comes down to little more than an argument that we should unilaterally impose a new refund commitment upon the producers. This we will not do. Assuming, without deciding, that we have authority to impose

[2] Also see Order denying applications of New York Commission for rehearing and reconsideration and motion for a stay issued December 31, 1962, in *J. Ray McDermott, et al.*, Docket No. C163-301, *et. al.*

such additional restriction where extraordinary conditions exist that would justify such action, we think this clearly would not be a proper action for us to take here. Since the producers cannot abandon service without our authority and since, as indicated above, it would not be in the public interest to approve any such abandonment request, we would be in a position of having induced producers to dedicate their gas to the market upon one set of conditions, and then imposing more stringent conditions upon them. Such a course of action, except under the most extraordinary conditions, would appear to be inconsistent with the Commission's obligation to act upon applications with "such certainty as to allow the exercise of choice upon (the producer's) part." *Sunray Mid-Continent Oil Company v. F.P.C.*, 270 F. 2d 404. Equally important it would so denature the value of a Commission authorization as to place any reliance upon our actions in this area in serious jeopardy.

While this case relates to the imposition of refund conditions in temporary authorizations already issued, we do not wish our determination here to be construed as indicating that we will normally impose such a condition if the applications for temporary authority were before us for the first time. On the contrary, as we made clear in our order in *J. Ray McDermott, supra*, in granting temporary authorizations at our area ceiling prices for producers to sell gas, pending the conclusion of the statutory hearing on the permanent certificate, we have balanced the competing interests of producers and consumers (as well as given full consideration to the needs for certainty of the natural gas companies and the public generally) by providing that while the temporarily certificated price is not subject to refund, the price during this interim period cannot exceed our ceiling price and the producers may not file for any higher price authorized by their contract pending issuance of the permanent certificate. Our policy in this respect was clearly set forth in the Fourth Amendment to our Statement of General Policy No. 61-1 in which we reduced the Southern Louisiana ceiling and observed that the Commission's

iterim ceilings represent the Commission's judgment of a ceiling which "will enable the Commission to hold the line on new sales in the area at a level consistent with the public interest and, at the same time, to enable producers to obtain authorizations which provide them a reasonable basis for proceeding with their operations and furnishing needed supplies of gas."

We recognize that at the time the motion was made it appeared that considerable time would lapse before the applications herein would be heard and disposed of. However, since that time, we have consolidated for hearing the above-listed cases as well as most of the other certificate applications now pending for the sale of gas in Southern Louisiana.[4] We anticipate that a final disposition in that proceeding will be forthcoming in the not too far-distant future. A decision therein would dispose of the above-listed applications.

The Commission orders:

The Motion of Public Service Electric and Gas Company, Long Island Lighting Company and the United Gas Improvement Company to impose price conditions in temporary certificates is hereby denied.

Commissioners Morgan and Ross *concurring* for the reasons set forth in their respective concurring statements to the order issued February 5, 1963, in Docket No. C162-1544, *et al, Amerada Petroleum Corporation, et al.*, p. 218, supra, to the extent applicable to this order.

---

[4] *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al., supra*, footnote 1.

APPENDIX B

STATUTE INVOLVED

The Natural Gas Act, June 21, 1938, c. 556, 52 Stat. 821-833, as amended, 15 U.S.C. 717-717w, provides in pertinent part as follows.

Section 7(b), 15 U.S.C. 717f(b):

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

Section 7(c), 15 U.S.C. 717f(c):

> No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, * * * unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations * * *. [T]he Commission shall set the matter for hearing and shall give reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under the rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may

issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate * * * .

Section 7(e), 15 U.S.C. 717f(e):

* * * [A] certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the * * * sale * * * covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of [the Act] and the requirements, rules, and regulations of the Commission thereunder, and that the proposed * * * sale, * * * to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

Section 19(a), 15 U.S.C. 717r(a):

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. * * * No proceeding to review any order of the Commission shall be brought by

any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.

Section 19(b), 15 U.S.C. 717r(b):

Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. * * *